In The

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-431

RANDOLPH ROBINSON,

Petitioner,

vs.

STATE OF OHIO,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

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Petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Ohio, which was entered in this case on June 27, 1979, reversing the judgment of the Court of Appeals for the First Appellate District of Ohio, which had upheld petitioner's motion to suppress evidence gained from a search of a closed non-transparent bag located in the locked trunk of petitioner's automobile, on the grounds that inventory searches of impounded vehicles violate the Fourth and Fourteenth Amendments of the Constitution of the United States if they go beyond actions reasonably undertaken to determine the need of impoundment and to safeguard impounded property.

OPINIONS BELOW

The June 27, 1979 opinion of the Supreme Court of Ohio, for which review is sought, is reported at 58 Ohio St. 2d 478, 391 N.E. 2d 317 (1979) and printed here as Appendix A. The opinion of the Court of Appeals for the First Appellate District of Ohio, Hamilton County, is unreported and printed here as Appendix B. The judgment entry of the Hamilton County Court of Common Pleas is printed here as Appendix C.

JURISDICTION

On June 7, 1977, a motion to suppress the evidence obtained from the "inventory" search of petitioner's automobile was overruled by the Hamilton County Court of Common Pleas. Petitioner subsequently entered a plea of no contest to the charge of possession of marijuana. The Court made a finding of guilt, and from that conviction petitioner appealed, alleging error in failing to grant the motion to suppress. On July 26, 1978, the Court of Appeals reversed the judgment of the trial court. Respondent State of Ohio appealed this decision to the Supreme Court of Ohio. On June 27, 1979 that Court reversed the Court of Appeals ruling, issuing a blanket statement that inventory searches are an exception to the warrant rule and making no comment on the specific issues of 4th and 14th Amendments as to the act of impoundment and the method, depth and manner of the so-called "inventory search" herein, although such issues were briefed and argued before it by both parties. Notice of appeal to this Court was given on July 20, 1979. Review of that decision by this Court is sought under the jurisdiction invoked by 28 U.S.C. § 1257 (3).

QUESTIONS PRESENTED

I. Following a traffic arrest, do the Fourth and Fourteenth Amendments require inquiry into the reasonable necessity of impounding the parked automobile that is in the possession of the detainee at the place of the arrest?

II. Before conducting an inventory search of impounded property, is a police officer required by the Fourth and Fourteenth Amendments to follow a "reasonableness" or "totality of the circumstances" test for determining whether (a) impoundment is necessary or reasonable and (b) the search is necessary, in order to meet the rationales underlying the inventory search exception to the warrant requirement?

III. Does the owner of an automobile have a reasonable expectation of privacy in closed containers secured within the vehicle's locked trunk, sufficient to establish the supremacy of his property rights over the caretaking procedures of law enforcement personnel?

IV. Does the physically present owner of an impounded automobile have the right to (a) participate or be consulted in the decision whether impoundment is reasonable or necessary and (b) waive the protection offered him by police procedures ostensibly designed to safeguard his property?

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fourth Amendment to the Constitution of the United States, which provides that:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Because a challenge to the validity of State police practices is presented, this case also involves Section 1 of the Fourteenth Amendment to the Constitution of the United States. That section reads as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

On February 9, 1977, City of Greenhills Police Officer, Donald Yost stopped the petitioner, Randolph Robinson, on Winton Road, Hamilton County, Ohio, about a mile from the drivers home, for the purpose of issuing a traffic citation for speeding. The officer took Mr. Robinson's driver's license and asked that he move his vehicle off the highway to a side road, which Mr. Robinson did. The officer called for a computer check on petitioner Robinson, and received the reply that his driver's license had been suspended. Robinson was arrested for driving without a valid license. It was later discovered that the computer information was erroneous.

The officer determined to take Mr. Robinson to the police station, approximately one-half mile from where the car was parked. The officer also confiscated both the ignition key and trunk key of petitioner's car, and said that the vehicle would be towed to a private impoundment lot. Petitioner Robinson asked the officer to return the keys, but the officer said they were necessary to tow the vehicle. The officer told the petitioner nothing about the need for an inventory search, nor about arrangements for return of the vehicle or its keys. There was no discussion of the possibilities of securely locking the vehicle.

The officer testified that he "had planned to impound the car all along", and after the Petitioner was removed to the station house, Officer Yost remained alone and began to prepare the car for towing. While awaiting the arrival of the wrecker, Officer Yost, alone and unassisted and on his own authority, proceeded to search the vehicle pursuant to what he described as a "custodial inventory of the vehicle." During this procedure the lone officer unlocked the trunk of the car and found a tool box, a

closed opaque white plastic bag, and several other items which he deemed "without value".

The officer listed the tool box on a form marked "Report of Motor Vehicle Impoundment and Inventory of Property", and although he admitted opening the tool box, none of its contents were listed in the report. The officer also opened the closed plastic bag found in the trunk. Within that bag were found additional bags, which were later found to contain marijuana.

Robinson was indicted by the Hamilton County Grand Jury for possession of a controlled substance, in violation of Ohio Revised Code § 2925.03 (A) (4). He moved to suppress the evidence obtained from the trunk of the automobile on June 7, 1977. The motion to suppress was overruled by the Hamilton County Court of Common Pleas, on June 8, 1977 (Case Number B-770734) and petitioner subsequently entered a plea of no contest to the offense charged in the indictment.

The court found petitioner guilty as charged, and sentenced him to serve 180 days in the city jail and five years probation. From that conviction, petitioner brought an appeal in the Court of Appeals of Ohio, First Appellate District, Hamilton County, Ohio, (case number C-77635), alleging trial court error in the denial of the petitioner's motion to suppress.

The Court of Appeals reversed the judgment of the trial court on that issue. (Appendix B.) On July 26, 1978 the Court stated that the search was invalid because it had gone beyond the scope necessary to accomplish its limited goals, in essence becoming a warrantless investigatory search. The Court stated:

> "We hold that the denomination of the search in the the present case as an inventory search does not remove it from the strictures of the Fourth Amendment * * *."

Respondent appealed to the Supreme Court of Ohio. That Court on June 27, 1979, reversed the judgment of the Court of Appeals and affirmed that of the Court of Common Pleas. That Court made no comment on the unique facts herein, addressing itself only to the generality of the legality of "inventory searches."

From that judgment, petitioner filed a Notice of Intention to seek review by the Supreme Court of the United States, and now petitions for the writ of certiorari to be issued to the Supreme Court of Ohio.

REASONS FOR GRANTING THE WRIT

Reasonableness of police procedures in searches has been the litmus paper by which Fourth Amendment challenges are tested, and this case squarely presents questions of reasonableness in impoundment of automobiles and subsequent unwitnessed and highly extended so-called inventory searches. As stated by the majority in *South Dakota* v. *Opperman,* 428 U.S. 364 at 374 (1976).

> ". . . as in all Fourth Amendment cases, we are obliged to look to all the facts and circumstances of this case . . ."

The facts in *Opperman,* as the Court next states, were that:

> ". . . police were indisputably engaged in a caretaking search of a lawfully impounded automobile . . . The owner . . . was not present to make other arrangements for the safekeeping of his belongings. The inventory itself was prompted by the presence in plain view of a number of valuables inside the car . . . there is no suggestion whatever that this standard procedure was a pretext concealing an investigatory police motive . . ." *South Dakota* v. *Opperman, supra* at 374

Several state Supreme Courts have cited *Opperman* to validate variety of inventory searches,* as did the Ohio Supreme Court in petitioner's case. *Ohio* v. *Robinson,* 58 Ohio St. 2d 478 (1979). The Ohio Court failed, however, to examine the case in light of the reasonableness standard, and an examination of the facts in petitioner's case, each different from the facts of *Opperman* quoted above, will underscore the necessity of requiring police procedures to be based upon the totality of the circumstances both as to the impoundment itself and thereafter as to manner and mode of the searching. The creation of a sub-species of governmental action labeled "inventory searches" does not cause abandonment of 4th and 14th amendment considerations. *Opperman* does not preclude careful inquiry into both the reasonableness of impoundment, safeguarding of property and invasion of reasonable expectation of privacy.

As Justice Powell succinctly stated in his concurring opinion in *Opperman*:

> ". . . Upholding searches of this type provides no general license for the police to examine all the contents of such automobiles . . . The absence of a warrant will not impair the effectiveness of post-search review of the reasonableness of a particularly inventory search."
>
> *Opperman, supra* at 378 and 382.

The proper constitutional perimeters of impoundment and inventory searches are at issue here. In almost every

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* It is interesting to note that on remand, the South Dakota Supreme Court expressly declined to follow the United States Supreme Court's validation of the *Opperman* inventory search, and elected instead to afford greater protection under state law than that required by the *Opperman* majority. 428 U.S. 364 *State* v. *Opperman,* 247 N.W. 2d 673 (S.D. 1976)

particular the given case gives an example of the dangers of exception to warranted search being used as a self created rationale for a curiosity search.

FOLLOWING A TRAFFIC ARREST, DO THE FOURTH AND FOURTEENTH AMENDMENTS REQUIRE INQUIRY INTO THE REASONABLE NECESSITY OF IMPOUNDING THE PARKED AUTOMOBILE THAT IS IN THE POSSESSION OF THE DETAINEE AT THE PLACE OF ARREST?

Certainly, it is well-settled law that police may frisk arrestees in an effort to protect the officer from weapons which an arrestee may be carrying. *Terry* v. *Ohio,* 392 U.S. 1 (1968). And if an arrestee does not post bond but instead must be jailed awaiting trial, the personal belongings he carried at the time of the arrest will be taken from him and cataloged. This is to satisfy procedures designed to protect jail personnel, as well as to prevent thievery or destruction of property of detainees.

But a more difficult question arises when a person is arrested while in his car. Even more difficult is the situation where closed containers are locked out of sight within the car. Once the arrestee is outside the automobile, his person is searched, and he is under the control of the police, the justification for search incident to arrest ends, since the arrestee cannot reach for a weapon and there is no longer a danger posed to the police. *Robinson* v. *U.S.,* 414 U.S. 218 (1973). *Gustafson* v. *Florida,* 414 U.S. 260 (1973). In this case, the area within the immediate control of the suspect could be said to include the driver's area of his car, and thus that area could be searched,

Adams v. *Williams,* 407 U.S. 143, 149 (1972). But the Court has never addressed the situation presented by this case, where a search incident to arrest led to at best transient impoundment and warrantless search of the closed container in a locked trunk of petitioner's automobile, via a key arbitrarily confiscated.

The propriety of automobile inventory searches in general was established by this Court in *South Dakota* v. *Opperman, supra. Opperman* made clear that the automobile must legitimately come under police custody in order for an inventory search to be conducted. *Id.* at 365. It did not establish the conditions under which custody of the vehicle could validly be undertaken, and certainly did not even hint that impoundment itself was an absolute authority.

This case is unlike the *Opperman* situation whereby an automobile is impounded as a sort of security for the payment of debt to the city (unpaid traffic tickets), and where the owner of the car is not present at the time of impoundment. It is not similar to *Cady* v. *Dombrowski,* 413 U.S. 433 (1973), where impoundment was lawful because the car was a public nuisance on the highway and the driver was too intoxicated to make arrangements to have the vehicle towed and stored. In this case, a driver stopped for a traffic offense, and arrested for a minor misdemeanor, was not consulted as to the impoundment of his car though obviously other arrangements were possible and even desirable. Petitioner would certainly have been able to return to his car in less than an hour, since his offense was station house bondable and he was within walking distance of both his home and the police station. Furthermore, he could readily have arranged for family or friends to pick up the car, which was parked by the officer's directions. There was no reason to believe the vehicle

contained objects dangerous to the public, as in *Cady, supra.* Moreover the officer made no inquiry nor entered into discussion whatsoever with the competent and present owner as to accomodations, if any was needed. The officer made a preliminary and unwarranted seizure of the keys and ignored the detainees request for their return. The impoundment itself was unreasonable and should be overturned by this Court, lest we translate the *Opperman* exception to warranted search to a device for bypassing warrant requirements in any auto or luggage situation.

Other than the discussion as set out above in *Opperman* and *Cady, supra,* this Court has not addressed the issue of what constitutes a reasonable impoundment. Numerous state Courts do however provide some guidance. In reviewing the state court decisions in the wake of *Opperman,* a growing number of jurisdictions require a showing of substantial police need before approving an impoundment. In *State* v. *Goodrich,* 256 N.W. 2d 506, 62 Minn. 1280 (1977), the Supreme Court of Minnesota articulated a position compatible with both the guarantees of the Fourth Amendment and the legitimate goals of impoundment and inventory. Before determining whether an inventory search was reasonable, the Court directed a threshold inquiry to the reasonableness of the impoundment, itself, "since that act gives rise to the need for and justification of the inventory." *Id.* at 510 the Minnesota Court then adopted a reasonableness standard for determining the validity of an impoundment prior to an inventory search:

> Reasonableness is to be evaluated on considerations relevant to Fourth Amendment interests, notion a subjective view regarding the acceptability of certain sorts of police conduct. A contrary approach would create a temptation for police to use an unconnected

temporary predicament of a motorist as a pretext for an investigation unauthorized by a warrant. *Id.* at 511

Numerous other jurisdictions have adopted a reasonableness test for impoundment, (which is indeed a species of seizure) placing the burden of establishing the reasonableness on the police, taking into account whether the owner is capable of making other arrangements for the safekeeping of his vehicle; *State* v. *Stockbower,* 397 A. 2d 1050, 79 N.J. 1 (1979); *Virgil* v. *Superior Court,* 268 Cal. App. 2d 127 (1968); *Altman* v. *State,* 335 S. 2d 626 (Fla. D.C.A. 1976); *City of Danville* v. *Dawson,* 528 S.W. 2d 687 (Ky. C.A. 1975); *State* v. *Rome,* 354 S. 2d 504 (1978).

Certainly the impoundment was unreasonable in this case with a police escort, petitioner could have moved the car to the police station one-half mile away, even though it was thought he had no valid driver's license, and a friend could have picked him up following his booking for driving without a license. Or he could have left the car on a side road of the highway, parked as directed by the officer, if he wished, and returned with a friend within an hour or two. Instead, the mere fact of his arrest on any charge, substantial or not, is said to justify the expense and intrusion of property rights that impoundment represents. Certainly this cannot be the rule.

BEFORE CONDUCTING AN INVENTORY SEARCH OF IMPOUNDED PROPERTY IS A POLICE OFFICER REQUIRED BY THE FOURTH AND FOURTEENTH AMENDMENTS TO FOLLOW A "REASONABLENESS" OR "TOTALITY OF THE CIRCUMSTANCES" TEST FOR DETERMINING WHETHER:

A. Impoundment Is Necessary Or Reasonable, And

B. The Search Is Necessary In Order To Meet The Rationales Underlying The Inventory Search Exception To The Warrant Requirement?

Reasonableness is the standard for deciding whether to search impounded property, as well as for deciding whether to impound property in the first place. The question of an inventory search is logically distinguishable from those cases involving the "automobile exception" to the warrant requirement. In the latter type of case, warrantless searches of automobiles are permitted if there is probable cause to believe the driver has placed articles in the car which give evidence of criminal activity. *Carroll* v. *United States,* 267 U.S. 132 (1925). The reasoning is that, due to the inherent mobility of the car, there is no time to get a warrant. Probable cause, is "the measure of legality" of such a seizure. *Chambers* v. *Maroney,* 399 U.S. 42 (1970).

But it is important to distinguish searches of automobiles that are conducted, not upon probable cause, but only as an administrative function for protection of the property. "The word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and

disappears." *Coolidge* v. *New Hampshire,* 403 U.S. 443 at 461 (1971).

Instead, we are concerned here with the proper boundaries of inventory searches. These administrative searches are discussed in *Opperman* v. *South Dakota, supra,* and are said to be justified "in response to three distinct needs":

> "The protection of the owner's property while it remains in police custody . . . the protection of the police against claims or disputes over lost or stolen property . . . and the protection of the police from potential danger . . ."
>
> *Opperman, id.* at 370.

That the inventory procedure itself is valid as a community caretaking function is beyond question, but *Opperman* cannot be used to validate virtually every so-called inventory search in its entirety. Rather, each case is judged by a reasonableness standard which balances the intrusion necessary to accomplish the goals of the administrative cataloging versus the reasons to begin that cataloging at all.

In petitioner's case, there was no question of potential danger to the police. Petitioner was stopped for a routine speeding charge. There was no indication of possession of weapons or the desire to hinder in any way the performance of the officer's functions. Unlike *Cady* v. *Dombrokski, supra,* in which an inventory search was necessary because the police had real reason to believe there were weapons in the trunk of the car this case presents no such reasonable supposition. A traffic offense does not imply that weapons or contraband may be found in the vehicle, and thus searches to protect the police are not necessary.

Dyke v. *Taylor Implement Manufacturing Co.,* 391 U.S. 216 (1968).

As to the questions of protection of the owner's property and the protection of the police from false claims over lost property, ". . . we are obliged to look to all the facts and circumstances of this case . . . Whether a search and seizure is unreasonable within the meaning of the Fourth Amendment depends on the facts and circumstances . . ." *Opperman, supra,* at 374, quoting *Cooper* v. *California,* 386 U.S. 58 at 39 (1967). In petitioner's case, the property was secure. The car itself could easily have been taken to the police station for forty-five minutes, without a substantial chance of property destruction before the owner would be released. It is even more outrageous that a search of the securely locked trunk be conducted in the guise of "protecting the property of the arrestee," particularly when the officer took the separate trunk key into his possession against the wishes of the owner. The property was obviously well secured to begin with. Finally, snooping into closed, opaque containers within the locked trunk does nothing to protect either the owner or the police. Rather, it begins to give the appearance of harassment and pretextual search.

As the Fifth Circuit noted in *U. S.* v. *Guill,* 484 F. 2d 990 at 991-992 (1973):

> "It is temptingly simplistic to employ the phrase 'inventory' as though uttering it solves everything, and all too easy to state over broadly the interests which inventory searches vindicate, and to automatically give to those interests a primacy, which in the balance between public and private interests, they do not necessarily enjoy."

DOES THE OWNER OF AN AUTOMOBILE HAVE A REASONABLE EXPECTATION OF PRIVACY IN CLOSED CONTAINERS SECURED WITHIN THE VEHICLE'S TRUNK, SUFFICIENT TO ESTABLISH THE SUPREMACY OF HIS PROPERTY RIGHTS OVER THE CARETAKING PROCEDURES OF LAW ENFORCEMENT PERSONNEL?

It is beyond dispute that the touchstone of Fourth Amendment Analysis in examining searches of personal property is whether there was a reasonable expectation of privacy in the property on the part of the owner. *Katz* v. *U. S.*, 389 U.S. 347 (1967). The appropriate expectation of privacy depends on the type of property, the scope of the search, and similar factors. For example, as noted above, there is a lesser expectation of privacy in an automobile than in one's house or office, because automobiles are subjected to public view and their movement is regulated by the state. *Chambers* v. *Marovey, supra.* But where personal property is locked or secured in such a way that it "manifests an expectation that the contents would remain free from public examination," *U. S.* v. *Chadwick,* 433 U.S. at 11 (1977), there is greater protection against State intrusion.

In petitioner's case, a locked trunk was opened and searched. Further, a closed, opaque plastic bag inside the trunk was opened and examined. Clearly, petitioner had a great expectation of privacy in both the trunk and the bag. The "automobile exception" may afford reason to search a passenger compartment, or even an unlocked glove compartment where title and registration papers are often kept, as in *Opperman,* but a trunk is an area in which a car owner has a greater expectation of privacy. *Winberly* v. *Superior Court,* 546 P. 2d 417 (Cal. 1976);

State v. *Bradshaw,* 322 N.E. 2d 311 (Ohio C.A. 1974). The fact that a trunk is part of a car does not fit it under *Chambers*-type automobile searches; rather, the fact that it is locked personal property shows an expectation of privacy similar to that of locked personal luggage as in *U. S.* v. *Chadwick, supra.* This is heightened in this case by the officer's unilateral and unessential seizure of the separate key to such locked automobile trunk.

As to the closed bag, clearly privacy is expected in closed containers placed in private spaces. As long as the outward appearance of a bag gives no indication of illegal contents, a proper inventory search simply catalogs the existence of the bag itself. This is true whether the bag is locked or not. *Arkansas* v. *Sanders,* 99 S. Ct. 2586 (1979); *People* v. *Counterman,* 556 P. 2d 481 (Colo. 1976). The rule in such a case, if an inventory search is valid from the start, should be to note the existence of the bag or container in the trunk without detailing contents. The function of the inventory is therefore completed, and the privacy of the citizen is also protected.

Moreover, an expectation of privacy is manifested in this case due to the nature of the arrest. This is not a case where a suspect was arrested for an offense relating to property (such as theft offenses, where stolen goods may have been in the trunk) or an offense indicating a violent temperament of the owner (such as armed robbery, where weapons might be in the trunk). This was a simple arrest under the mistaken belief that the car's owner was driving without a valid driver's license. The vehicle search could be justified not upon probable cause, but only upon inventory search rationales. Surely in an inventory search of private property unconnected to the offense charged, there is a greater expectation that the privacy rights of the citizen will be closely observed.

Moreover, since an intrusion into his property is being carried out, a citizen in such a situation surely should at least have the opportunity to consult with the police as to the treatment of the property. On a simple license offense such as this, a citizen expects his private property to remain under his control to a large degree. Surely he should be permitted to make arrangements to have the property picked up by a friend. *Altman* v. *State, supra.* Or he has the reasonable expectation that police intrusion will be so minimal as possible. In a case in which the charge for which the car owner is arrested is unrelated to the property sought to be searched, it seems natural that the owner retains important property rights. Thus, when officer Yost refused to return the keys to petitioner's car to him, and refused to discuss alternatives to towing, he violated petitioner's privacy rights under the Fourth Amendment.

Finally does not the conduct of the so called administrative search have to be conducted in a manner consistent with the rationale that gives rise to its exceptional status. If so, can this search be deemed to be protective against either false claim, danger, or property loss? It is conducted without corroborating witnesses, not at a station house or impoundment lot but alone on a side road during the night, after the owner has been taken away? The manner is such as to dissipate each of the rationales of *Opperman.*

DOES THE PHYSICALLY PRESENT OWNER OF AN IMPOUNDED AUTOMOBILE HAVE THE RIGHT TO:

A. Participate Or Be Consulted In The Decision Whether Impoundment Is Reasonable Or,

B. Waive The Protection Offered Him By Police Procedures Ostensibly Designed To Safeguard His Property?

As noted above, the rationales for inventory searches include the protection of the property of the detainee, the protection of the police from disputes over lost property, and protection of the police from potential danger. *Opperman, supra* at 370. It has been established that in this traffic arrest, the police were in no danger. Our analysis therefore turns on the question of protection.

As *Opperman* clearly states, this administrative procedure is designed to protect the property from pilferage or damage. It is thus intended to protect the property rights of the citizen during the time when he has no direct control over the property. Procedures designed to protect private interests may be waived by the protected person, if the waiver is knowing and intelligent. *Faretta* v. *California,* 422 U.S. 806 (1975).

In this case, after a simple consultation between the arrestee and the police as to the impending inventory search of the vehicle, the petitioner should have been permitted the opportunity to waive either the impoundment or the inventory of the vehicle, or both. Both procedures were designed to protect his property and to prevent him from claiming police misuse of the property. If he would chose to simply retrieve the property an hour or so later, saving the expense of towing and the intrusion into his

private property, he should be able to waive the protection offered him by the caretaking procedures.

Such a waiver could be easily accomplished by a discussion between the detainee and officer as to the advantages of impoundment and inventory, and a brief spoken or written explanation of the consequences of waiver. Such an explanation and a waiver form itself could have been printed on the reverse side of Officer Yost's "Report of Motor Vehicle Impoundment and Inventory of Property." The absence of such an approach suggests the use of the inventory search in this case to be a pretext for a broad search of the vehicle, where no other type of search could possibly have been remotely possible under the Fourth Amendment.

CONCLUSION

This Court in all of its concurring and dissenting decisions in *Opperman* recognized the need for caution against a broad-stroked self-sustained invasion of privacy by police under the ambit of an exceptional administrative procedure. That prescience was well placed. The reasonableness of both impoundment, and of nature, manner, and extent of so-called inventory searches are all measured by the operative facts of this case.

For the reasons stated above, certiorari should be granted.

Respectfully submitted,

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APPENDIX A

THE STATE OF OHIO, APPELLANT, *v.* ROBINSON, APPELLEE.

[Cite as State v. Robinson (1979), 58 Ohio St. 2d 478.]

Criminal law—Search and seizure—Inventory search of lawfully impounded vehicle—Constitutionality.

A standard inventory search of the trunk of a lawfully impounded automobile does not contravene the Fourth Amendment to the United States Constitution.

(No. 78-1206—Decided June 27, 1979.)

APPEAL from the Court of Appeals for Hamilton County.

On February 9, 1977, appellee, Randolph F. Robinson, was arrested for driving a motor vehicle while his operator's license was under suspension. Subsequent to the arrest and removal of appellee to the police station, a tow truck was summoned for the purpose of transporting appellee's vehicle to a commercial storage lot for impoundment.

Prior to the arrival of the truck, the arresting officer procured a standard inventory form from his police cruiser and began a custodial inventory of appellee's automobile. After completing an inventory of the valuables located within the interior of the vehicle, the officer, in accordance with standard department procedure, inspected and inventoried the contents of the vehicle's trunk. Therein, a large plastic bag was found, which contained numerous smaller bags of marijuana. The total quantity of the substance exceeded the bulk amount specified by R. C. 2925.03 (A) (4).

The Hamilton County Grand Jury indicted appellee for possession of a controlled substance in violation of R. C. 2925.03 (A) (4). A plea of not guilty was entered and appellee moved to suppress the evidence obtained from the trunk of the automobile. The motion was overruled. Appellee then withdrew his earlier plea and pleaded no contest. The Court of Common Pleas of Hamilton County found appellee guilty as charged and placed him on probation for five years.

Upon appeal to the Court of Appeals, appellee's conviction was reversed and the cause remanded to the Court of Common Pleas.

The cause is now before this court upon the allowance of a motion for leave to appeal.

Mr. Simon I. Leis, Jr., prosecuting attorney, and *Mr. Daniel J. Breyer*, for appellant.

Mr. Allen Brown and *Mr. Mark Eckerson*, for appellee.

HERBERT, J. The query posed for resolution in the cause *sub judice* is whether the Fourth Amendment to the United States Constitution is contravened when police, pursuant to standard department procedure, conduct an inventory search of the trunk of a lawfully impounded automobile.

Appellant agrees that a routine inventory search of a lawfully impounded automobile may be no more intrusive than is necessary to protect personal property located within the vehicle, and to guard the interests of the police. Appellant argues, however, that the instant search did not exceed these limitations and was reasonable within the meaning of the Fourth Amendment.

Whether a particular search and seizure is unconstitutional depends upon the facts and circumstances of the

cause. *Cooper* v. *California* (1967), 386 U.S. 58, 59; *Coolidge* v. *New Hampshire* (1971), 403 U.S. 443, 509-510 (Justice Black, concurring and dissenting); *South Dakota* v. *Opperman* (1976), 428 U.S. 364, 373. In *Opperman*, the United States Supreme Court considered the constitutional propriety of police inventory searches. The court stated, at page 373: "[T]his court has consistently sustained police intrusions into automobiles impounded or otherwise in lawful police custody where the process is aimed at securing or protecting the car and its contents." The court concluded that a routine inventory search of a lawfully impounded automobile is not unreasonable within the meaning of the Fourth Amendment when performed pursuant to standard police practice, and when the evidence does not demonstrate that the procedure involved is merely a pretext for an evidentiary search of the impounded automobile. It appears logical to conclude from this that a pretextual search is not an inventory search.

The *Opperman* decision did not condone vehicle inventory searches of unlimited scope. Justice Powell, in his concurring opinion at page 380, stated: "Upholding searches of this type provides no general license for the police to examine all the contents of such automobiles." Nevertheless, in discussing the holding in *Cady* v. *Dombrowski* (1973), 413 U.S. 433, a cause in which the court upheld a custodial search of the trunk of an impounded vehicle, the *Opperman* court stated at pages 374-375: "[T]he protective search [in *Cady*] was carried out in accordance with *standard procedures* in the local police department * * *, a factor tending to ensure that the intrusion would be limited in scope to the extent necessary to carry out the caretaking function." (Emphasis *sic.*)

In the cause at bar, the Court of Appeals concluded that the search of appellee's trunk went beyond the bounds

of *Opperman*. We disagree. In our opinion, a standard inventory search of the trunk of a lawfully impounded automobile does not contravene the Fourth Amendment to the United States Constitution. Furthermore, the use of the bags of marijuana as evidence in the trial below was permissible, and the motion to suppress that evidence was properly overruled by the trial court. *United States* v. *Edwards* (C.A. 5, 1978), 577 F. 2d 883, certiorari denied, 99 S. Ct. 458. See *Cady* v. *Dombrowski, supra; United States* v. *Wade* (C.A. 5, 1977), 564 F. 2d 676; *United States* v. *Gravitt* (C.A. 5, 1973), 484 F. 2d 375, certiorari denied, 414 U.S. 1135; *State* v. *Wallen* (1970), 185 Neb. 44, 173 N.W. 2d 372; *State* v. *Walker* (1978), 119 Ariz. 121, 579 P. 2d 1091.

As stated in *United States* v. *Edwards, supra,* at page 893: "[s]o long as the scope of the search is reasonable, taking into consideration the three interests to be protected by the inventory, * * * [it will] be held to be a constitutionally permissible intrusion."* See, also, *United States* v. *Balanow* (N.D. Ind. 1975), 392 F. Supp. 200, affirmed 528 F. 2d 923; *United States* v. *Gerlach* (E.D. Mich. 1972), 350 F. Supp. 180; *People* v. *Trusty* (1973), 183 Colo. 291, 516 P. 2d 423; Annotation 48 A.L.R. 3rd 537.

The judgment of the Court of Appeals is reversed and the judgment of the Court of Common Pleas is affirmed.

Judgment reversed.

CELEBREZZE, C. J., P. BROWN, SWEENEY, LOCHER and HOLMES, JJ., concur.

W. BROWN, J., dissents.

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* *South Dakota* v. *Opperman* (1976), 428 U.S. 364, at page 369, recognized that inventory procedures are designed to accommodate the following distinct needs: (1) the protection of the owner's property while it remains in police custody; (2) the protection of police against claims or disputes over lost or stolen property; and (3) the protection of the police from potential danger.

APPENDIX B

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

No. C-77635

STATE OF OHIO,
Plaintiff-Appellee,

vs.

RANDOLPH F. ROBINSON,
Defendant-Appellant.

OPINION

(Filed July 26, 1978)

**APPEAL FROM THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

Messrs. Simon L. Leis, Jr., Daniel J. Breyer and Peter C. Weinstein, 420 Hamilton County Court House, Court and Main Streets, Cincinnati, Ohio 45202, for Plaintiff-Appellee,

Messrs. Allen Brown and Mark Eckerson, Fifth Level, Barrister House, 216 East Ninth Street, Cincinnati, Ohio 45202, for Defendant-Appellant.

BLACK, J.

Robinson appeals from the overuling of his motion to suppress a quantity of marijuana discovered by the police during an inventory search of his impounded car, conducted in accordance with "Standard Police Procedures."

Officer Donald P. Yost stopped appellant for speeding at fifty miles an hour in a thirty-five mile an hour zone. A routine check of his driver's license disclosed that it had been suspended and he was arrested. While appellant was being transported to the police department by another officer, the arresting officer proceeded with "Standard Police Procedure" for such a case. He called for a wrecker to impound the car on a private parking lot,[1] and he made an inventory of the car's contents. In the locked trunk, he observed an opaque plastic bag as well as wood scraps and a metal box of tools. Opening the plastic bag he found the marijuana which is the subject of appellant's motion to suppress. We reverse the judgment below, finding that the search and seizure went beyond all reasonable scope under the particular circumstances of this case.

All warrantless searches and seizures of persons, houses, papers and effects are in violation of the Fourth Amendment of the United States Constitution unless they are reasonable. In *South Dakota* v. *Opperman* (1976), 428 U.S. 364, the Supreme Court held that an inventory of an automobile made routinely pursuant to "Standard Police Procedure" is reasonable, but the search in that case extended no further than the passenger compartment and the unlocked glove compartment. The Chief Justice noted

[1] We have no difficulty with the legality and propriety of the arrest of appellant or the impoundment of his car under the stated circumstances.

that there are cases which "have recognized that standard inventories often include an examination of the glove compartment, since it is a customary place for documents of ownership and registration, . . ., as well as a place for the temporary storage of valuables." *Id.* at 372. However, the locked trunk of Opperman's automobile was not entered and its contents were not inventoried. As stated by Justice Powell in his concurring opinion, *Id.* at p. 379, ". . . the unrestrained search of an automobile and its contents would constitute a serious intrusion upon the privacy of the individual in many circumstances. . . . Upholding searches of this type [referring to the Opperman search] provides no general license for the police to examine all the contents of such automobiles." Justice Powell noted that the trunk had not been searched because it was locked. *Id.* 380 n. 7. There are limitations to the scope of any inventory search, and we believe that in the instant case that scope was exceeded.

In *Cady* v. *Dombrowski* (1973), 413 U.S. 433, the Supreme Court held the seizure of bloody items (including a pair of police uniform trousers, a pair of gray trousers, a night stick with the name "Dombrowski" stamped on it, a raincoat, a portion of a car floor mat, and a towel) in the locked trunk of a car towed from an accident to a private garage for safe keeping was reasonable under the circumstances of that case. The police who searched the car had the following information: (1) Dombrowski had wrecked the car and was a Chicago police officer who was required to carry a service revolver at all times; (2) Dombrowski was drunk; (3) there was a flashlight in the passenger compartment of the car with a few spots of blood on it; (4) the revolver was not on Dombrowski's person nor in the passenger compartment. *Dombrowski* is distinguishable on its facts from the present case, the prin-

ciple difference being that the cause of the search there was the missing service revolver, which could have fallen into the wrong hands. There is no similar cause for the search in the instant case.

We have held searches to be unreasonable under similar, albeit not identical, circumstances. The inventory search of an impounded car was unreasonable where the purpose may have been to discover evidence to be used in the prosecution of the defendant. *State* v. *Jones,* No. C-76341 (1st Dist. May 25, 1977). Contraband was held illegally seized when it was in a closed envelope which happened to fall from the defendant's purse as she was looking for identification when accosted by the police in an apartment whose owner had called police to get defendant and others to leave. *State* v. *Strayhorn,* No. C-77371 (1st Dist. April 12, 1978). Contraband was suppressed when it was discovered by a police officer who indiscriminately squeezed all baggage coming off a conveyor belt at an airport in order to detect by smell the presence of marijuana in any of the luggage. *State* v. *Apke,* No. C-75002 (1st Dist. April 19, 1976).

We hold that the denomination of the search in the instant case as an inventory search does not remove it from the strictures of the Fourth Amendment, that if performed without a warrant, it must be reasonable, and that not even "Standard Police Practice" will justify the entry of a closed opaque bag inside the locked trunk of a car impounded for a routine traffic violation.

The assignment of error has merit. The motion to suppress should have been granted. We reverse the judgment below and remand this cause for further proceedings according to law.

BETTMAN, P. J. and CASTLE, J., Concur.

APPENDIX C

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS

No. B770734

THE STATE OF OHIO

vs.

RANDOLPH F. ROBINSON

COURT FINDING ON PLEA OF NO CONTEST

(Entered July 27, 1977)

This Cause came on this day to be heard, the Defendant having entered a Plea of No Contest, and was submitted to the Court.

And, the Court hereby finds said Defendant is Guilty of Trafficking Offense (Possession) 2925.03 R.C. sentence deferred, referred to Probation Department for investigation and report, Defendant released on same bond.